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06 JUL 2006

In re Application of	:	
XIA, Menghang et al.	:	
Application No.: 10/530,830	:	DECISION
PCT No.: PCT/US03/31822	:	
Int. Filing Date: 09 October 2003	:	ON PETITION UNDER
Priority Date: 10 October 2002	:	
Docket No.: 21113P	:	37 CFR 1.10(c) and (d)
For: ASSAY METHODS FOR STATE-	:	
DEPENDENT CALCIUM CHANNEL	:	
AGONISTS/ANTAGONISTS	:	

This decision is in response to applicant's "Request for Corrected Filing Date," filed in the United States Patent and Trademark Office on 27 October 2005. It has been treated as a petition under 37 CFR 1.10(c) and (d).

BACKGROUND

On 09 October 2003, applicant filed international application PCT/US03/31822, which claimed a priority date of 10 October 2002. The thirty month period for paying the basic national fee expired at midnight on 10 April 2005.

Applicant filed a transmittal letter for entry into the national stage in the United States, accompanied by, *inter alia*, the basic national fee. It was accorded a receipt date of 09 April 2005.

On 27 September 2005, the Office mailed a Notification of Acceptance (Form PCT/DO/EO/903) and a Filing Receipt indicating that the requirements under 35 U.S.C. 371 (c)(1), (c)(2) and (c)(4) were satisfied on 09 April 2005. It further indicated that all 35 U.S.C. 371 requirements were satisfied on 10 April 2005, as applicant did not request early processing.

On 27 October 2005, applicant filed the instant petition.

DISCUSSION

In the instant petition, applicant requests that the receipt date of application No. 10/530,830 be amended to 08 April 2005. However, applicant has not specified whether USPS entered an incorrect date into the "date in" field on the mailing label or whether USPTO assigned a receipt date other than the "date in". The requirements for a petition to correct a receipt date based on Express Mail records are set forth in 37 CFR 1.10(c). The section states as follows:

(c) Any person filing correspondence under this section that was received by the Office and delivered by the "Express Mail Post Office to Addressee" service of the USPS, who can show that there is a discrepancy between the filing date accorded by the Office to the correspondence and the date of deposit as shown by the "date-in" on the "Express Mail" mailing label or other official USPS notation, may petition the Director to accord the

correspondence a filing date as of the "date-in" on the "Express Mail" mailing label or other official USPS notation, provided that:

- (1) The petition is filed promptly after the person becomes aware that the Office has accorded, or will accord, a filing date other than the USPS deposit date;
- (2) The number of the "Express Mail" mailing label was placed on the paper(s) or fee(s) that constitute the correspondence prior to the original mailing by "Express Mail;" and
- (3) The petition includes a true copy of the "Express Mail" mailing label showing the "date-in," and of any other official notation by the USPS relied upon to show the date of deposit.

Items (1) and (2) have been met. The petition was filed promptly. The Express Mail mailing label number was listed on the correspondence. As to (3), applicant has not supplied a copy of the Express Mail label.

37 CFR 1.10(d)

To correct the receipt date under 37 CFR 1.10(d), applicant must establish that "date-in" was incorrectly entered or omitted. Applicant has not established that the "date-in" on the mailing label was incorrect, as applicant has not furnished a copy of the mailing label. Applicant has not established that 37 CFR 1.10(d) is applicable.

CONCLUSION

For the reasons listed above, applicant's petition under 37 CFR 1.10(c) and (d) to correct the receipt date of the filing to 08 April 2005 is **DISMISSED** without prejudice.

Any reconsideration on the merits of this petition must be filed within **TWO (2) MONTHS** from the mail date of this decision. Any reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.10".

Any further correspondence with respect to this matter should be addressed to the Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.



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